

### **Statutory Rights of Victims and Witnesses**

**For purposes of the rights enumerated in PC § 679.02 below, the following definitions apply:**

- **“Victim”** is defined as a person against whom a crime has been committed. (PC § 679.01)
- **“Witness”** is defined as any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced” (PC § 679.01)

### **Penal Code § 679.02:**

1. To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled.
2. To be informed by the prosecuting attorney of the final disposition of the case, as provided by § 11116.10.
3. To be notified of any sentencing proceedings and of the right to appear, to reasonably express his or her views, and of the right to have those views preserved by audio or video means, and to have the court consider his or her statements.
4. To be notified of any parole eligibility hearing and of the right to appear either personally or by other means, to reasonably express his or her views, and to have his or her statements considered.
5. To be notified of an inmate’s placement in a reentry or work furlough program or to be notified of an inmate’s escape.
6. To be notified that he or she may be entitled to witness fees and mileage.
7. To be provided with information about his or her right to civil recovery and the opportunity to be compensated from the state’s Restitution Fund.
8. To the expeditious return of his or her property which has allegedly been stolen or embezzled, when it is no longer needed as evidence.
9. To be notified if the defendant is to be placed on parole.
10. To be notified by the district attorney’s office (in certain cases) of a pending pretrial disposition of the case before a change of pleas is entered.
11. To be notified if offenders convicted of specified offenses are released on probation.

### **Rights in Absence of Criminal Charges**

*“Tarasoff” (Tarasoff v. Regents of the University of California (1974) 13 Cal.3d 177).*  
Duty to warn – Public officials may be liable to a victim where they hear a mental patient express death threats about a victim, and the officials neither get the patient committed nor warn the victim. *[Comment: I’m guessing this would apply to BPT and Corrections officials, but not sure]*

### **Victims' Rights Pre-Trial or Before Preliminary Examination**

1. **PC § 136.2.** Upon a good cause belief that intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to:
  - a. An order that a defendant shall not violate any provision of PC § 136.1 (intimidation of witness and victims)
  - b. An order that a person before the court other than the defendant (i.e. subpoenaed witness or other person entering the courtroom) shall not violate any provision of PC § 136.1.
  - c. An order that a particular law enforcement agency provide protection for a victim or a witness, or their families.
  - d. Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts or violence by the defendant.
  - e. The above orders may be issued on the court's own motion in domestic violence cases.
2. **PC § 841.5.** No disclosure of victim or witness' address or telephone number to any person arrested, or to any person who may be a defendant in a criminal action.

3. **PC § 136.7.** Illegal for person imprisoned in jail or prison who has been convicted of sex offense to knowingly reveal name and address of victim or witness to another inmate with intent that they will intimidate or harass the witness or victim through unauthorized correspondence.
4. **PC § 1054.2.** Disclosure of victim or witness' address or telephone number by attorney prohibited, without court order (applies when information is given to the attorney pursuant to PC § 1054.1(a)).
5. **PC § 1191.25.** Good faith effort to notify a victim of crime committed by an offender if the offender becomes an in-custody informant and there is an offer to reduce his or her sentence in exchange for testimony.
6. **PC § 1270.1.** Court must address any threats made to a victim or witness when setting bail amounts when certain crimes are alleged.
7. **PC §§ 679.04, 679.05.** Right of sex assault or domestic violence victim to counselor and support person at interviews by law enforcement, prosecution, or defense attorneys (including their investigators or agents) (exceptions apply).
8. **PC § 680.** Sexual Assault Victims' DNA Bill of Rights. List of rights to receive variety of information associated with DNA collected during sex assault exam.

#### **Victims' Rights at Preliminary Examination**

1. **PC § 868.** Prosecution may motion the court to have victim's family members present during preliminary examination when it is closed to public. Court must grant motion, absent specified circumstances.
2. **PC § 868.7.** Magistrate may, upon motion of the prosecutor, close the preliminary examination to the public during the testimony of a witness who is a minor and complaining witness in a sex offense or whose life would be subject to substantial risk.
3. **PC §§ 1346, 1346.1.** Video tape of preliminary examination testimony permitted for use at trial if witness is 15 years old or less or developmentally disabled and the crime is a sex offense. Also available for victims of spousal rape or corporal injury of spouse.

#### **Victims' Rights at all Court Hearings Prior to Disposition or Sentencing**

1. **Labor Code § 230.** No employer shall discharge or in any manner discriminate against an employee for taking time off to appear in court as a witness as required by law.
2. **PC § 868.5.** Right of prosecuting witness to have support person present when testifying in specified sexual assault, domestic violence and child abduction cases.
3. **PC § 868.6.** Separate waiting room in court house for minors under 16 years of age.
4. **PC § 1102.6.** Victim's right to present in criminal proceedings.
5. **PC § 1347.5.** Use of closed-circuit television to communicate testimony if victim of certain offenses is disabled.

### **HIV/AIDS Testing**

**H & S §§ 12050, 121055; PC §§ 1202.1, 1524.1.** Right to obtain court order and results of tests for HIV/AIDS in certain cases.

### **Additional Rights for Sex Assault Victims (not listed elsewhere)**

1. **Evid. C. § 782.** Limited Right to have past sexual conduct remain confidential.
2. **H & S § 1491.** Right to free VD test.
3. **PC § 293.5.** Right to be anonymous on pleadings and at trial
4. **PC § 1347.** Closed-circuit TV for minor's testimony
5. **PC § 637.4.** No polygraph for victims
6. **PC § 1112.** No psychiatric exam for victims

### **Right to Restitution**

**Cal. Const. art. I, § 28; PC § 1202.4.** Victims' right to receive restitution for economic losses suffered as a result of crime.

### **Protective Orders**

**FC § 6303.** Right to support at protective order hearing.

### **Witness Protection Program**

**PC § 14022 et seq.** "Witness" defined as a person who has been summoned or is reasonably expected to be summoned to testify in a **criminal** matter, including grand jury proceedings, for the people . . ."